

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Gwynedd Post Office
Gwynedd, Pennsylvania

Docket No. A2011-15

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

July 12, 2011

I. INTRODUCTION

On May 3, 2011, the Commission received a petition for review of the closing of the Gwynedd, Pennsylvania Post Office (Gwynedd Post Office).¹ An additional petition was received on May 20, 2011.² The Postal Service decision that is the subject of this proceeding was made on March 14, 2011.³ That decision was communicated to customers of the Gwynedd Post Office by letter dated April 4, 2011.⁴

On May 9, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.⁵

¹ Petition for Review Received from Christina Surowiec Regarding the Closure of the Gwynedd, PA Post Office 19436, May 2, 2011 (Petition for Review).

² Appeal of the Closing of the Gwynedd Post Office, May 16, 2011 (May 16 Appeal). Although this Appeal was untimely as petition for review, it has nevertheless been accepted for filing and the views expressed therein are part of the record in this proceeding.

³ Final Determination to Close the Gwynedd, PA Classified Station and Extend City Delivery Service, March 14, 2011. (Final Determination). The Final Determination was included as Item No. 31 to the Administrative Record (AR) filed by the Postal Service on July 1, 2011. The Administrative Record was submitted in both public and non-public versions as a response to Commission Information Request No. 1, June 23, 2011. Unless indicated otherwise, this reply brief will refer to the public version of the Administrative Record.

⁴ AR Item No. 33.

⁵ Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 9, 2011 (Order No. 726).

II. STATEMENT OF FACTS

The Gwynedd Post Office is described by the Postal Service in its Final Determination as a Classified Station located at 1200 Meetinghouse Road, Gwynedd, Pennsylvania. AR Item No. 31, page 1. Before being closed the Gwynedd Post Office provided service to 141 post office box customers and to retail customers who purchased such products and services as stamps, money orders, registered and certified letters, and Express Mail. *Id.*

Sometime prior to January 31, 2011, Postal Service Headquarters requested the Philadelphia Metropolitan District to review all Stations and Branches for possible consolidation. AR Item No. 25. On January 31, 2011, the Postmaster at the North Wales, PA Post Office requested permission to investigate the possible closure of the Gwynedd Post Office. AR Item No. 1. The request was granted on that same day. *Id.*

On February 25, 2011, the Postal Service notified customers of the Gwynedd Post Office of a "possible change in the way your postal service is provided." AR Item No. 22. As described in the notice, customers receiving carrier deliver service would experience no changes in service. *Id.* Their service was, and would continue to be, administered by the North Wales Main Post Office. *Id.* By contrast, customers with post office boxes at the Gwynedd Post Office were given a choice: they could either have their boxes relocated to the Springhouse Branch/Station located approximately 1.9 miles away and continue to use the name Gwynedd, PA 19436 in the last line of their mailing address, or they could receive carrier delivery at their residence originating out of the North Wales Post Office. *Id.* Customers were also invited to attend a public meeting on March 3, 2011, "to discuss [the new form of service] with [the Postal Service] before drawing any conclusions." The meeting was held on March 3 as scheduled with approximately 60 customers in attendance. AR Item No. 23 (non-public).

Within three days of the March 3, 2011 public meeting, the North Wales Postmaster forwarded a recommendation to the Philadelphia Metropolitan District Manager in which he recommended "that we complete a proposal to close the Gwynedd

Station and forward [it] to Postal Service Headquarters for review." AR Item No. 25. It appears that the formal proposal to close the Gwynedd facility had already been prepared at the time the North Wales Postmaster forwarded his recommendation to his district manager.⁶ That proposal was transmitted to the Vice President for Delivery and Post Office Operations on March 7, 2011. AR Item No. 29 and AR Official Record Index.

On March 14, 2011, the Final Determination to close the Gwynedd Post Office was approved. AR Item No. 31. The decision was based upon (1) a decline in mail volumes and revenues; (2) restrictions on customer traffic by a construction project on U.S. Route 202; (3) the availability of postal services at other facilities in close proximity; and (4) estimated annual savings to the Postal Service of approximately \$34,000. *Id.* at 2 and 4. The Final Determination also considered and responded to various concerns expressed by postal customers at the March 3, 2011 public meeting. *Id.* at 1-3.

On April 4, 2011, customers were notified that the Gwynedd Post Office would close on May 27, 2011. AR Item No. 33.

III. POSITIONS OF THE PARTIES

A. The Petitioner

In its initial brief filed June 27, 2011, Petitioner presents three arguments in support of its challenge to the closure of the Gwynedd Post Office.⁷ Those three arguments are: (1) that the Postal Service did not follow the procedures set forth in 39 CFR § 241.3 that apply to post office closings; (2) that the decision to close the Gwynedd Post Office was arbitrary and capricious; and (3) that the Postal Service's decision is not supported by substantial record evidence. *Id.* at 1.

⁶ See Proposal to Close the Gwynedd Classified Station and Provide Service Through the Springhouse Classified Station, AR Item No. 27 and AR Official Record Index (indicating March 5, 2011 as the date for AR Item No. 27).

⁷ Initial Brief in Support of Petition, June 7, 2011 (Petitioner's Brief).

B. The Postal Service

On May 18, 2011, the Postal Service responded to the Commission's directive at page 3 of Order No. 726 that it "file the administrative record regarding this appeal" or "[a]ny responsive pleading to this Notice."⁸ In the May 18 Notice, the Postal Service reiterates its long-standing argument that the closure of a station or branch such as the Gwynedd Post Office is not covered by 39 U.S.C. § 404(d) or by 39 CFR § 241.3. May 18 Notice at 1-2. In addition, it argues that the procedural requirements of section 404(d) do not apply to cases like this in which customers do not lose access to postal services when such services continue to be available at alternative postal facilities in "close proximity" to the discontinued facility. *Id.* at 2. Alternatively, the Postal Service argues that even if those statutory and regulatory provisions apply, its decision to close the Gwynedd Post Office should be upheld. *Id.* at 3-5.

On June 27, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 726.⁹ In that filing, the Postal Service once again reiterates its position that the Gwynedd facility is not a "post office" and is therefore not subject to 39 U.S.C. § 404(d) or 39 CFR § 241.3. *Id.* at 1-2. It also repeats its argument that the procedural requirements of section 404(d) do not apply to cases like this in which customers do not lose access to postal services. *Id.* at 2. Finally, the Postal Service argues that even if the requirements of section 404(d) applied, it has met those requirements because: (1) it has met all procedural requirements; and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the community, employees, and the economic savings from the discontinuance of the Gwynedd facility. *Id.* at 2-8.

⁸ Notice of the United States Postal Service, May 18, 2011 (May 18 Notice). Attached as part of the May 18 Notice is a copy of the Final Determination; the addresses of postal facilities near to the Gwynedd Post Office; a list of alternate locations at which customers can purchase stamps; a copy of the February 15, 2011 notice to Gwynedd Post Office customers of possible changes in their postal service; and a copy of the April 4, 2011 notice that the Gwynedd Post Office would close on May 27, 2011.

⁹ Comments of the United States Postal Service, June 27, 2011 (Postal Service Comments).

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.¹⁰

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the

¹⁰ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. None of the petitioners in this proceeding requested suspension of the closure of the Gwynedd Post Office.

post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

V. ARGUMENT

A. The Commission Has Jurisdiction Over Closure of the Gwynedd Facility

The Commission has repeatedly rejected the Postal Service's assertions that stations and branches are not "post offices" under section 404(d)(5). Docket No. A2010-3, *East Elko Station*, Order No. 477 (June 22, 2010) at 5-6; and Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 at 65-66. Accordingly, the Commission should reject the Postal Service's argument that section 404(d)(5) does not cover the Gwynedd Post Office because it is a station or branch.

Similarly, the Commission should reject the Postal Service's argument that the requirements of 39 U.S.C. § 404(d) do not apply when postal services remain available from postal facilities in close proximity to the facility being closed. The Postal Service bases its argument on the Commission decision in PRC Docket No. A2010-3.¹¹ The argument is misplaced. In *East Elko*, the Commission considered not only the physical proximity of postal facilities, but the fact that the services provided to customers of the facility being discontinued would continue to be available from another postal facility. In this case, the services heretofore provided to customers of the Gwynedd Post Office will be split among at least two other post offices, *i.e.*, North Wales Main Post Office which will take over carrier delivery service and the Springhouse Station that will assume responsibility for post office boxes.

¹¹ Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010 (*East Elko*).

B. The Procedures Followed by the Postal Service Require Improvement

Petitioner bases its argument that the Postal Service did not follow the procedures for post office closings on its contention "that the Postal Service was already fully committed to closing the Gwynedd Post Office when it first notified residents that this was a possibility." Petitioner's Brief at 3. That claim is supported by Affidavit A to Petitioner's Brief which alleges that at the March 3 public meeting the president of the local postal workers' union stated that at the time residents were invited to the public meeting the Postal Service was already taking steps to dismantle post office boxes at the Gwynedd Post Office. *Id.* at Appendix A, page 2.

Further support for Petitioner's claim can be found in the sequence of events immediately following the March 3 public meeting. Within three days of that meeting, a recommendation was forwarded to the District Manager "that we complete a proposal to close the Gwynedd Station and forward [it] to Postal Service Headquarters for review." AR Item No. 25. However, the recommendation that a proposal be completed was hardly necessary, since a completed proposal accompanied the recommendation. See AR Item No. 27 and AR Official Record Index. The recommendation was, in turn, forwarded to Postal Service Headquarters within two days and the Final Determination was approved one week later on March 14, 2011. AR Item No. 29 and AR Official Record Index; and AR Item No. 31. This sequence of events is consistent with and supportive of a conclusion that the discontinuance procedures were, at best, "window dressing." Consideration of these facts leaves the impression that public participation in this case was less than meaningful.

Petitioner also expresses disappointment over having missed the opportunity to request a suspension of the Gwynedd Post Office closing during the pendency of her appeal because of her unfamiliarity with the appeals process. Petitioner's Brief at 15. This is a reference to the fact that section 3001.114(a) of the Commission's regulations requires that an "[a]pplication for suspension ... shall be made at the time of the filing of a petition for review" 39 CFR §3001.114(a). Petitioner suggests that "[b]etter notification of the right of appeal and more detailed guidance for a layperson

undertaking a highly legalistic venture" would have been appropriate. Petitioner's Brief at 15.

The Public Representative agrees with Petitioner. Customers without a legal or regulatory background who seek to challenge the closing of their post office require at least some guidance, particularly during the initial stages of instituting an appeal. See Comments of the United States Postal Regulatory Commission on Proposed Amendments to Post Office Consolidation and Closing Process, May 2, 2011 at 3-4 (Commission Comments). In this case, it appears that no such guidance was provided because of the Postal Service's continued refusal to acknowledge Commission jurisdiction over the closing of post office stations and branches. Unless and until that legal issue can be authoritatively resolved, the Postal Service should at the time it announces a station or branch closure provide adequate and fair notice to customers of the appeal procedures, including the option of requesting suspension of the closing during an appeal.

For the foregoing reasons, the Public Representative submits that the procedures followed in this case for public involvement do not serve the broader interest of fostering public confidence in the fairness of post office closings. The Commission has itself recognized that the failure to provide customers with a meaningful opportunity to comment on proposed post office closings will foster the "appearance that seeking customer comment is merely an afterthought" and, as such, only devalues customer input. *Id.* It should come as no surprise when, as here, customers react negatively to the discontinuance process and label it a "sham." Petitioner's Brief at 3.

Whether or not the procedural deficiencies in this case warrant a remand to the Postal Service, the Commission should, at a minimum, remind the Postal Service of the Commission's prior admonition that the procedures for obtaining public participation in the discontinuance process need improvement. See, e.g., Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 3, 2010 at 48-56 (Advisory Opinion); see *also*, Commission Comments at 5-7 (Commission Comments). That need includes the need to advise

customers of potential appeal opportunities. The goal should not merely be public participation, but meaningful public participation.

C. The Decision to Close the Gwynedd Facility Has Not Been Adequately Justified

Petitioner argues that the Postal Service's decision is arbitrary and capricious and that its decision is not supported by substantial evidence. Petitioner's Brief at 5-14. For the reasons set forth below, the Public Representative agrees with Petitioner.

1. The Decline in Mail Volumes and Revenues

In its Final Determination, the Postal Service relies, in part, upon a decline in mail volumes and revenues to justify its decision to close the Gwynedd Post Office. AR Item No. 30 at 2. Related to the volume and revenue data is the Postal Service's conclusion that the construction on U.S. Route 202 “will result in a further restriction of customer traffic permanently.” *Id.* Petitioner challenges the Postal Service's reliance upon both of these findings. For the reasons that follow, the Public Representative agrees with Petitioner that these findings do not adequately support closure of the Gwynedd Post Office.

In its June 27, 2011 comments, the Postal Service summarizes revenue data for Fiscal Years 2008, 2009, and 2010, as follows: \$110,643.00 in FY 2008; \$74,617.00 in FY 2009; and \$64,536.00 in FY 2010. Postal Service Comments at 4. Together, these revenue figures represent a decline of approximately 41.7% from FY 2008 to FY 2010. By presenting these figures the Postal Service implies that business at the Gwynedd Post Office is experiencing an irreversible decline. That implication is, however, contradicted by other evidence.

First, it should be noted that most of the decline in revenues occurred during FY 2009 when revenues dropped approximately \$36,000, or 32.6%. The period covered by FY 2009 was October 1, 2008, through September 30, 2009. It was during this period that the United States experienced the historic financial crisis and severe recession that

adversely affected Postal Service volumes and revenues nationwide. To rely upon the Gwynedd Post Office revenue decline during this period without any attempt to compare this decline to the decline in revenues at comparable post offices, stations or branches in the District is potentially misleading and, in any event, cannot be accepted as dispositive of the business situation at the Gwynedd Post Office. Moreover, just as volume and revenue losses have moderated in other parts of the country, volume and revenue losses at the Gwynedd Post Office have also moderated. See AR Item 12 (non-public) at 1 (showing the revenue decline for January, 2011).

Second, the level of business activity at the Gwynedd Post Office has been adversely affected by the construction on U.S. Route 202. The Postal Service relies upon the Route 202 construction as "permanently" restricting customer access at the Gwynedd Post Office. AR Item No. 31 at 2. Petitioner challenges this conclusion, noting that even now, as construction continues, there is still access to the Gwynedd Post Office and that when the construction project is completed access to the post office will be improved.¹² Petitioner also suggests that when the construction is completed the business opportunities for the Gwynedd Post Office may actually increase because of improved access to Route 202. Petitioner's Brief at 11. Because it assumed, without any record support, that access to the Gwynedd Post Office is permanently impaired, the Postal Service has failed to address the relevant considerations pointed out by the Petitioner.

Third, even at the depressed FY 2010 revenue levels relied upon by the Postal Service, it appears that the Gwynedd Post Office is financially operating in the black. The FY 2010 revenues were \$64,536. Postal Service Comments at 4. The estimated annual savings associated with the closure of the Gwynedd Post Office are \$34,270. Postal Service Comments at 7. The difference (*i.e.*, revenues over savings) is

¹² A similar point is made by the customer who filed the May 16 Appeal. May 16 Appeal at 2 ("Not only will the current Post Office building continue to enjoy the same visual exposure it now has on Route 202, but also the access will be even better and safer").

approximately \$30,000.¹³ The Postal Service's failure to address why \$30,000 of revenues over alleged savings is inadequate to justify continued operation of the Gwynedd Post Office constitutes a fatal defect in its decision to close the post office.

For the foregoing reasons, the Public Representative submits that the Postal Service's reliance upon the decline in mail volumes and revenues as a basis for closing the Gwynedd Post Office is arbitrary, capricious, and not supported by substantial evidence.

2. The Estimated Savings From Closure of the Gwynedd Post Office Are Inflated

The Postal Service estimates annual savings of approximately \$34,270 from closure of the Gwynedd Post Office. Postal Service Comments at 7. Most of these savings are attributable to the salary and related benefits of the postal clerk who worked at the post office. AR Item No. 31 (non-public) at 4. However, as Petitioner points out and the Postal Service concedes, the clerk will be transferred to the North Wales Post Office. Petitioner's Brief at 12; and AR No. 31 at 3. Without a more complete explanation by the Postal Service, it is unclear how, or in what sense, the clerk's salary and related benefits can be considered "savings" to the Postal Service. This same problem was previously identified by the Commission. Advisory Opinion at 58-59; and Commission Comments at 7-8.

Unless and until the Postal Service provides a justification for considering the clerk's salary and related benefits to be a bona fide "savings" resulting from closure of the Gwynedd Post Office, the actual savings projected by the Postal Service should be reduced by the amount of such salary and benefits.¹⁴

¹³ This \$30,000 figure assumes that the annual savings projected by the Postal Service will be \$34,270. For the reasons discussed below, these savings appear to be grossly inflated. If the projected savings are less than \$34,270, the financial picture for the Gwynedd Post Office could improve substantially.

¹⁴ As noted in the prior section, a reduction in projected savings from closure of the post office would increase the amount of net revenues to the Postal Service from continued operation of the Gwynedd Post Office, even at the reduced revenue level for FY 2010.

Related to the issue of whether closure of this post office will produce savings to the Postal Service is the question of whether the closure will otherwise leave revenues unaffected. The Postal Service appears to assume that closure of the Gwynedd Post Office will reduce expenses, but will not adversely affect revenues. The Petitioner challenges this assumption and suggests that closure of the post office will adversely affect revenues. Petitioner's Brief at 12. The Commission has itself questioned whether such an assumption is justified and has urged the Postal Service to "develop a better methodology for analyzing potential salary and benefit cost savings from discontinued facilities." Advisory Opinion at 59 and 60; and Commission Comments at 7-8. If it were to be concluded that revenues would decline because of the closing, any such loss in revenues would justify a downward adjustment in projected savings.

3. Customer Concerns Have Not Been Adequately Addressed

The Postal Service asserts that it has given adequate consideration to the concerns expressed by customers at the March 3, 2011 public meeting. Postal Service Comments at 5-6. Petitioner disagrees with that conclusion. Petitioner's Brief at 8-10. One area of concern, in particular, stands out as having been given inadequate consideration, namely, the adequacy of ingress, egress, and parking at the Springhouse Station where the Gwynedd post office boxes are to be relocated. *Id.* at 9.

Petitioner claims that the Springhouse Station has less desirable access and parking conditions and alleges that the Postal Service's Final Determination failed to address these problems in its Final Determination. *Id.* The Final Determination's discussion of these alleged problems consists of the following:

3. Concern: Customers were concerned about the inconvenient access to the Springhouse Station.

Reponses: Come [sic] customers may find that the Springhouse Station located at 905 Bethlehem Pike will be more convenient than the Gwynedd Station. The Springhouse Station also offers extended window service

hours from 8 a.m. to 4:30 p.m., Monday through Friday and closed on Saturday with 24-hour lobby access.

4. Concern: Customers complained about the parking at the Springhouse Station.

Response: There is parking in the front and the rear of the Springhouse facility and there are handicap spaces available for customers with disabilities.

AR Item No. 31 at 2.

This discussion stands in stark contrast to the comments by the customer who filed the May 16 Appeal:

The problems associated with a move to the Springhouse Post Office location were voiced over and over by those in attendance at the standing room only meeting. Most of the people have used that facility and were familiar with its shortcomings. Everyone was unanimous in his or her concerns about using this location safely.

Access to that shopping center in Springhouse is extremely dangerous and parking is already very limited....Mr. [X] [Postal Service Representative] said there is ample additional parking in the rear lot to compensate for the shortage out front. I have since checked on that rear parking lot many times now and each time it has been full to capacity.....How can you add the traffic of another 119 personal postal boxes and tell us all will be fine....Exiting the Springhouse Post Office and trying to make a left hand turn back onto Bethlehem Pike to return to our area of the township is even more dangerous than entering. Mr. [Y], a Lower Gwynedd Township Supervisor...echoed this dangerous situation. He said the township would need to take a hard look at anything the Post Office would want to do to expand the Springhouse site because of the safety factor that already exists at the shopping center.

May 16 Appeal at 3-4 (emphasis in the original).

A comparison of the Postal Service's discussion of the customers' concerns regarding the relocation of post office boxes to the Springhouse Station with the description of the problems provided by the customer who filed the May 16 Appeal reveals the Postal Service response to be both non-responsive and inadequate.

VI. CONCLUSION

The Postal Service's Final Determination to close the Gwynedd Post Office is seriously flawed. The analysis fails to satisfy the arbitrary and capricious standard. Essential findings are not supported by substantial evidence. The Commission cannot affirm the closure determination in its present condition and should remand the case to the Postal Service to remedy the deficiencies identified above and in the submissions by Petitioner and other participants.

Respectfully Submitted,

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